



Phoenix Corporate Office
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Via Regular Mail and Email (McGrath.shawn@Epa.gov)

Mr. Shaun McGrath
Regional Administrator
U.S. EPA Region 8
8RA
1595 Wynkoop St
Denver, CO 80202-1129

Re: **Extent of “Waste Treatment System” at the McNulty Gulch Area at the Climax Mine near Leadville, Colorado**

Dear Administrator McGrath:

The purpose of this letter is to request a meeting with you to discuss your office’s review of materials we submitted on October 20, 2014 regarding the extent of the permitted “waste treatment system” for the McNulty Gulch area at the Climax mine near Leadville, Colorado. We submitted the materials to your office as part of requested follow-up to a meeting that we held with Karen Hamilton and members of her staff on October 6, 2014. A copy of these materials is enclosed for your convenience.

The information we provided document that the McNulty Gulch area at the Climax mine has been covered by an individual National Pollutant Discharge Elimination System (NPDES) permit (i.e., federal Clean Water Act (CWA) Section 402 permit) that was initially issued by EPA in 1974 and subsequently reissued numerous times by the Colorado Department of Public Health and Environment (CDPHE). Consistent with the applicable effluent limitation guidelines (ELGs) for the ore mining and dressing point source category, the 1974 NPDES permit required Climax to construct and maintain interceptor ditches surrounding much of the McNulty Gulch area and the rest of the mining operation to ensure compliance with the applicable ELGs and other limitations. The interceptor ditches (and associated natural hydrologic divide features) ensure that all potentially impacted water in any way associated with mining operations will be captured within and treated by the extensive water system at the mine.

Consistent with the conditions of the 1974 NPDES permit, and all subsequent reissued versions of the permit, and as contemplated by the ELG, the entire portion of the McNulty Gulch area that is within the interceptor ditches or that otherwise drains to the water system due to natural topographic divides or other routing is part of a “waste treatment system” excluded from the regulatory definition of “waters of the United States” (*see* 40 C.F.R. §§ 122.2 & 232.2). Further, consistent with the NPDES permit, this portion of the McNulty Gulch area is a source of mine

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drainage subject to federal ELGs and CWA Section 402 permitting and cannot be considered at the same time to be jurisdictional waters of the United States.

We appreciated the opportunity to meet with your office in October 2014 and to provide the enclosed materials clarifying the extent of the "waste treatment system" at the McNulty Gulch area of the Climax mine. During our discussions we understood that our dialogue would remain open and that EPA would discuss its preliminary thoughts with us before finalizing its response. Unfortunately, we have not been able to continue the dialogue we began in October of last year. Despite repeated phone and email requests to EPA and the Corps to share their preliminary thoughts on this matter, neither agency has shown a willingness to discuss the matter or provide transparency regarding their evaluation. Additionally, it appears that any decision regarding the scope and extent of the "waste treatment system" at the McNulty Gulch area of the Climax mine may have been delegated back to the Army Corps of Engineers (Corps). However, the scope of the "waste treatment system" at the McNulty Gulch area is based on an understanding of past and current NPDES permits issued by EPA and subsequently by CDPHE as an authorized NPDES state. The Corps does not have the regulatory expertise or background that EPA and CDPHE have in administering NPDES permits or the related concepts including the scope and application of ELGs for ore mining and dressing facilities necessary to assess the extent of the "waste treatment system" at the McNulty Gulch area of Climax mine.

The scope and extent of the "waste treatment system" at the McNulty Gulch area of the Climax mine are critical to our continued mining operations and the mine's long-standing NPDES permit history. We respectfully request to meet with you as soon as is convenient to continue the promising dialogue we began in October 2014.

Thank you for your assistance with this important matter.

Very truly yours,



William E Cobb

Vice President, Environmental Services and Sustainable Development

Enclosure

cc: Karen Hamilton, EPA Region 8
Susan Bachini Nall, U.S. Army Corps of Engineers